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the State of Nevada *ex rel.* its Department of Corrections.

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

ROY ALAN O'GUINN,

Plaintiff,

vs.

JACKIE CRAWFORD, *et al.*,

Defendants.

Case No. CV-N-05-0007-ECR-(VPC)

RESPONSE TO ALTERNATIVE MOTION

Defendants, Jackie Crawford and the State of Nevada *ex rel.* its Department of Corrections, by and through their attorneys, Brian Sandoval, Attorney General of the State of Nevada, and Nhu Q. Nguyen, Deputy Attorney General, responds to Plaintiff's alternative motion contained in his Reply to Defendants' Response to Motion for Injunctive Relief. This Response is pursuant to Local Rule 7-2(b) and is made and based upon the following Memorandum of Points and Authorities, together with all other papers, pleadings and documents on file herein.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **NATURE OF THE RESPONSE**

4 Defendants respectfully request this Court deny Plaintiff's alternative motion for this  
5 Court to direct Defendants to apply to this Court for permission prior to the transfer of Plaintiff,  
6 if any, to another facility. This alternative motion is unsupported and without merit and should  
7 be denied.

8 **II.**

9 **PROCEDURAL HISTORY**

10 On January 31, 2005, Plaintiff filed a Second Amended Complaint (#9<sup>1</sup>) and a Motion  
11 for a Preliminary Injunction (#12). In the motion, Plaintiff contends that Defendants will now  
12 move him out of Lovelock Correctional Center ("LCC") because he has filed a lawsuit against  
13 them and asking this Court for a preliminary injunction enjoining Defendants from moving  
14 Plaintiff to another facility. #12, p. 1. On February 7, 2005, this Court entered an order  
15 directing Defendants to respond to the motion. #13, p. 3. II. 6-8. On March 15, 2005,  
16 Defendants filed their response to the motion. #17. On March 25, Plaintiff filed his Reply to  
17 Defendants' Response to his motion. #19. Contained in his Reply is an "alternative motion."  
18 #17, p. 2, I. 8.

19 **III.**

20 **ARGUMENT**

21 Plaintiff's "alternative motion" is unsupported and without merit. As stated in  
22 Defendants' Response to Plaintiff's Motion for Injunctive Relief, there are presently no plans to  
23 transfer Plaintiff from LCC. #17, p. 2, II. 16-18. Dissatisfied and realizing that his motion for  
24 injunctive relief will probably be denied by this Court, in the Reply, Plaintiff states that:

25 [I]nstead of a preliminary injunction plaintiff will alternately [sic]  
26 move the court to simply direct opposing counsel and her clients to  
27 NOT transfer plaintiff from the LCC prison unless they first apply to  
28 this court and submit a genuine penological basis for their intent to  
do so, and upon review by this court, if genuine cause exists, the  
court would grant the request.

1 This refers to the Court's docket number.

#19, p. 2, ll. 9-12. Plaintiff attempts to support his alternative motion with statements such as "there is no guarantee whatsoever that a retaliatory move [such as transferring Plaintiff to another facility] won't occur at some point in this litigation," and that such action "is a typical maneuver that occurs when prisoners make a claim regarding their circumstances." #17, p. 2, ll. 4-7.

Plaintiff's statements are unsupported by any fact, evidence, or authority. Again, identical to his Motion for a Preliminary Injunction, the statements that Plaintiff make in an attempt to support his motion are mere speculation. Plaintiff fails to state any facts to support that LCC has ever transferred an inmate to another facility out of retaliation for filing a lawsuit. Moreover, this Court should afford deference to LCC's decisions regarding classification and re-classification and possible transfer of its inmates absent a strong countervailing reason. To do otherwise would be a waste of this Court's judicial resources and unduly burdensome for LCC. See *Sandin v. Conner*, 515 U.S. 472, 482, 115 S.Ct. 2293, 2299 (1995) ("the involvement of federal courts in the day-to-day management of prisons, often squandering judicial resources with little offsetting benefits . . . federal courts ought to afford appropriate deference and flexibility to [correctional institutions] trying to manage a volatile environment"). Plaintiff has not demonstrated any extraordinary reason why this Court should involve itself in LCC's day-to-day management of its inmates and facilities.

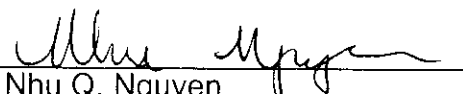
#### IV.

#### CONCLUSION

In light of the foregoing, Defendants respectfully request this Court deny Plaintiff's "alternative motion."

DATED this 11<sup>th</sup> day of April, 2005.

BRIAN SANDOVAL  
Attorney General

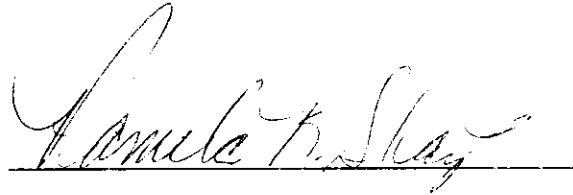
By   
Nhu Q. Nguyen  
Deputy Attorney General  
Litigation Division

Attorneys for Defendants.

**CERTIFICATE OF SERVICE**

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on this 11<sup>th</sup> day of April, 2005, I served a true and correct copy of the foregoing RESPONSE TO ALTERNATIVE MOTION by depositing for mailing with the U. S. Postal Service to the following:

ROY ALAN O'GUINN #67905  
LOVELOCK CORRECTIONAL CENTER  
P O BOX 359  
LOVELOCK NV 89419-0359



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